**THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**W.P.No.17894 of 1997**
**Dated:05-01-2007**

**BETWEEN**:
Kolimi Nadipi Jamal Vali

Petitioner

And

The District Collector, Kurnool and another

Respondents

**THE HONOURABLE SRI JUSTICE NOOTY RAMAMOHANA RAO**

**W.P.No.17894 of 1997**

**ORDER**:

1. This writ petition has been instituted questioning the validity of the notification issued invoking the powers available under Section 4 (1) of the Land Acquisition Act, 1894 ( for short 'the Act') to compulsorily acquire the land of an extent of Ac.7.69 cents situated in various survey numbers in A.Kodur village of Bandi Atmakur Mandal, Kurnool District.

2. Heard Sri G.Shekar Reddy, representing the counsel for the writ petitioner.

3. The notification has also indicated that powers available under sub section 4 of Section 17 of the Act have been invoked to dispense with the enquiry under Section 5-A of the Act in view of the urgency. The purpose for which the land is acquired is to provide house sites to the weaker sections. The writ petitioner has asserted that the substance of the notification has not been published in the locality concerned within the period, and that possession of the land has not been taken from him and consequently the very invocation of the power available under sub section 4 of Section 17 of the Act is not *bonafide*.

4. All that the counter affidavit would say is that the notification under Section 4(1) of the Act has been got gazetted on 30-03-1996 and it has also been published in two local news papers i.e. 1) Vishalandra and 2) Enadu in their issues dated 31-03-1996. It has also been asserted that the substance of the notification has already been got published at conspicuous places in the village and it was also got publicized through beat of tom tom and by the affixture at the land on 25-04-1996. Therefore, it is clear that the substance of the notification issued under Section 4 (1) of the Act had been duly publicized, but however, the counter affidavit admits that notwithstanding the invocation of power under sub section 4 of Section 17 of the Act, the possession of the land has not been taken from the petitioner. It is thus demonstratebly clear that the invocation of the power under sub section 4 of the Section 17 of the Act has been improper. Though, the purpose for which the land is sought to be compulsorily acquired is to provide house sites to the weaker sections, the fact that the State Government had not felt the necessary urgency to take possession of the land in question reflects that there is truly not much of an urgency in the matter. I am therefore, convinced that the power invoked under sub section 4 of Section 17 of the Act to dispense with the obligation to conduct the enquiry under Section 5-A of the Act is improper. In fact, the correct principles to be adopted in matters of this nature have been enunciated by the Supreme Court in several cases and importantly in the following matters:

**Union of India Vs. Mukesh Hans**[1] and **Union of India Vs. Krishan Lal Arneja,**[2] which read as hereunder:

"1. Section 17(4) which is an exception to the normal mode of acquisition contemplated under the Act shows that existence of urgency or unforeseen emergency though is a condition precedent for invoking Section 17(4), that by itself is not sufficient to direct the dispensation with Section 5-A inquiry. It requires an opinion to be formed by the Government concerned that along with the existence of such urgency or unforeseen emergency there is also a need for dispensing with Section 5-A inquiry. If that was not the intention of the legislature, then the latter part of Section 17(4) would not have been necessary and the legislature in Sections 17(1) and (2) itself could have incorporated that in such situation of existence of urgency or unforeseen emergency Section 5-A inquiry will be dispensed with automatically. But then that is not the language of the section. Although it is possible in a given case that the urgency under Section 17(1) or the unforeseen emergency under Section 17(2) itself may be of such degree that it could require the appropriate Government on that very basis to dispense with the inquiry under Section 5-A but then there is a need for application of mind by the appropriate Government that such an urgency for dispensation with the Section 5-A inquiry is inherent in the two types of urgencies contemplated under Sections 17(1) and (2) of the Act.
2. The limited right given to an owner/person interested under Section 5-A of the Act to object to the acquisition proceedings is not an empty formality and is a substantive right, which can be taken away for good and valid reason and within the limitations prescribed under Section 17(4) of the Act. Therefore, if the appropriate Government decides to take away this minimal right then its decision to do so must be based on materials on record to support the same and bearing in mind the object of Section 5-A".

In the second case, the Supreme Court referred to some of the earlier judgments including the judgment of **Narayan Govind Gavate Vs. State of Maharashtra**[3] and held as under:

" Section 17 confers extraordinary powers on the authorities under which it can dispense with the normal procedure laid down under Section 5-A of the Act in exceptional case of urgency. Such powers cannot be lightly resorted to except in case of real urgency enabling the Government to take immediate possession of the land proposed to be acquired for public purpose. A public purpose, however laudable it may be, by itself is not sufficient to take aid of Section 17 to use this extraordinary power, as use of such power deprives a landowner of his right in relation to immovable property to file objections for the proposed acquisition and it also dispenses with the inquiry under Section 5-A of the Act. The authority must have subjective satisfaction of the need for invoking urgency clause under Section 17 keeping in mind the nature of the public purpose, real urgency that the situation demands and the time factor i.e., whether taking possession of the property can wait for a minimum period within which the objections could be received from the land owners and the inquiry under Section 5-A of the Act could be completed. In other words, if power under Section 17 is not exercised, the very purpose for which the land is being acquired urgently would be frustrated or defeated.

"Urgency" for invoking of Section 17 of the Act should be one arising naturally out of circumstances, which exist when the decision to acquire the land is taken and not such, which is the result of serious lapse or gross delay on the part of the acquiring authority. Normally urgency to acquire a land for public purpose does not arise suddenly or overnight but sometimes such urgency may arise unexpectedly, exceptionally or extraordinarily depending on situations such as due to earthquake, flood or some specific time-bound project where the delay is likely to render the purpose nugatory or infructuous. A citizen's property can be acquired in accordance with law but in the absence of real and genuine urgency, it may not be appropriate to deprive an aggrieved party of a fair and just opportunity of putting forth its

objections for due consideration of the acquiring authority. While applying the urgency clause, the State should indeed act with due care and responsibility. Invoking urgency clause cannot be a substitute or support for the laxity, lethargy or lack of care on the part of the State administration. Failure to take timely action for acquisition by the authorities of the Union of India cannot be a ground to invoke the urgency clause to the serious detriment of the right of the landowner to raise objections to the acquisition under Section 5-A. However, the position maybe different where the delay is caused or occasioned by the landowner himself."

5. I therefore, consider it appropriate that the writ petitioner should be provided with an opportunity to participate in the enquiry under Section 5-A of the Act and demonstrate to the satisfaction of the Collector that the land in question is itself unsuitable for the purpose for which it is sought to be acquired or that the very purpose for which the compulsory acquisition has been contemplated is not called for. It is also open to the writ petitioner to demonstrate that the Section 6 declaration having not been published within the time frame limit, the proposed acquisition is liable to be treated to have lapsed. Therefore, that part of the notification which invoked the power available under sub section 4 of the Section 17 of the Act has been quashed.

6. The writ petition is allowed to the extent indicated above. No order as to costs.

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NOOTY RAMAMOHANA RAO,J

05-01-2007
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[1] (2004) 8 SCC 14= AIR 2004 SC 4307

[2] (2004) 8 SCC 453=AIR 2004 SC 3582

[3] (1977) 1 SCC 133= AIR 1977 SC 183